

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

**ANGELA EARNEY and
CANDY HOLLAND,**

PLAINTIFFS

V.

MARJAN, INC.,

DEFENDANT

Civil No. 96-123-P-H

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

On their claim for intentional infliction of emotional distress the plaintiffs have recognized that, under Maine law, workers' compensation remedies provide the exclusive ground for relief for a claim for damages caused by intentional infliction of emotional distress arising from sexual harassment that is job-related. See Knox v. Combined Ins. Co. of Am., 542 A.2d 363, 365-66 (Me. 1988). They seek to distinguish their case because a kitchen supervisor telephoned the plaintiffs at their *home*. On the undisputed facts, however, it is apparent that the telephone call was directly job-related; the caller was seeking to inquire why the plaintiff Holland was having an "attitude" toward her supervisor and as soon as the employer's agent was informed by Holland that it related to the sexual harassment, he backed away from the inquiry and terminated the call. See Holland Dep. at 56 (Sept. 26, 1996). On this record, the call is therefore entirely job-related notwithstanding the fact

that the plaintiffs were at home.¹ Any injury arose out of and in the course of employment. It is therefore subject to the exclusivity provisions of the Workers' Compensation Act. See Caldwell v. Federal Express Corp., 908 F. Supp. 29, 32-34 (D. Me. 1995). Accordingly, the defendant's motion for summary judgment on Count III is **GRANTED**.

The plaintiffs' motion for summary judgment is **DENIED**. The plaintiffs' testimony, if believed, makes out a horrendous case of sexual harassment that most employers would not want to see the light of day, but there are genuine issues of material fact on whether the conduct was pervasive and unwelcome. See Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525, 540 (1st Cir. 1995), cert. denied, 116 S. Ct. 1044 (1996).

SO ORDERED.

DATED THIS 21ST DAY OF JANUARY, 1997.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

¹ The injury need not occur on the employer's premises. Comeau v. Marine Coastal Servs., 449 A.2d 362, 366-67 (Me. 1982).